

SENATE BILL 1331
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 67, relative to tax appeals.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 1, is amended by adding Sections 2 through 22 of this act as a new part to be appropriately designated.

SECTION 2. This part is enacted to establish an independent office of tax appeals within the administrative office of the courts which shall be responsible for providing the public with a just system of resolving controversies with the department of revenue and to ensure that the elements of due process are present with regard to such resolution of controversies. To accomplish this purpose the administration of the taxes is separated from the adjudication of disputes between taxpayers and the department of revenue.

SECTION 3. In this part, unless the context otherwise requires:

(1) "Administrative law judge" means an administrative law judge appointed under Section 6.

(2) "Department" means the administrative office of the courts, established under Tennessee Code Annotated, Title 16, Chapter 3, Part 8;

(3) "Director" means the administrative director of the courts;

(4) "Discovery" means the use of subpoenas, subpoenas duces tecum, interrogatories, requests for production, requests for admission, depositions, and other

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methods of civil procedure by which one party to an action may discover information within the knowledge and control of another person;

(5) "Office" means office of tax appeals in the department;

(6) "Party" means the department of revenue or the taxpayer;

(7) "Proceeding" means only a proceeding under the jurisdiction of the office;

(8) "Subpoena" means a command to appear at a certain time and place to testify, or to appear at a certain time and place to produce books, papers, and other things, and testify;

(9) "Tax" means a tax levied in Tennessee Code Annotated, Title 57 or Title 67, Chapters 1-4 and 6-9;

(10) "Taxpayer" means a person required to pay a tax.

SECTION 4. The office of tax appeals is established within the administrative office of the courts.

SECTION 5. The office of tax appeals has original jurisdiction to hear formal appeals from assessment of the department of revenue under Tennessee Code Annotated, Section 67-1-1801. Appeal to the office may be taken only pursuant to this part and Tennessee Code Annotated, Section 67-1-1801. Jurisdiction of the office is limited to, and this part applies to and governs, an administrative appeal regarding any other taxes administered by the department of revenue levied under Tennessee Code Annotated, Title 57 or Title 67, chapters 1-4 and 6-9.

SECTION 6. (a) The governor shall appoint a chief administrative law judge of the office of tax appeals. If one or more additional administrative law judges are established in the office of tax appeals, the governor shall appoint additional administrative law judges.

(b) The initial term for an administrative law judge, including the chief administrative law judge, is four (4) years. The governor may reappoint a person appointed to serve as an administrative law judge, including the chief administrative law judge, to subsequent terms of

four (4) years each; provided that such terms shall be staggered if more than one (1) such administrative law judge has been appointed.

(c) Upon notice of an administrative law judge opening, including a vacancy caused by the decision of a sitting administrative law judge to not seek reappointment, a vacancy caused by the removal or resignation of an administrative law judge, or an administrative law judge opening resulting from the decision to add an additional administrative law judge position to the office, the governor shall advertise and invite applications for the position.

(d) The governor shall collect and review sufficient information to thoroughly evaluate each applicant. The review by the governor must include a published notice requesting written comments on the list of applicants for an administrative law judge opening.

SECTION 7. (a) The chief administrative law judge may be disciplined or removed from office by the director only for good cause.

(b) An administrative law judge other than the chief administrative law judge may be disciplined or removed from office by the chief administrative law judge only for good cause.

(c) In this section, "good cause" includes:

(1) violation of the Tennessee code of judicial conduct Rule 10 of the Rules of the Supreme Court;

(2) conviction of a felony;

(3) unjustified failure to handle the caseload assigned or similar nonfeasance of office;

(4) failure to meet the requirements of Section 9 relating to qualification for office;
and

(5) unreasonable failure to comply with the statutes or regulations regarding the confidentiality of taxpayer information.

SECTION 8. (a) The chief administrative law judge:

(1) shall exercise general supervision of the office; and

(2) may select and hire staff for the office.

(b) An administrative law judge, including the chief administrative law judge may preside over a proceeding and carry out any procedures authorized under this part.

(c) The chief administrative law judge may adopt regulations implementing or interpreting the provisions of this part including rules of procedure and evidence for proceedings before the office.

SECTION 9. (a) An administrative law judge, including the chief administrative law judge, at the time of appointment shall:

(1) be licensed to practice law in this state; and

(2) have experience in the field of tax law or tax administration.

(b) A person appointed as an administrative law judge under Section 6 who is not licensed to practice law in this state at the time of appointment shall become licensed to practice law in this state within twelve (12) months after appointment or shall cease to hold office.

(c) An administrative law judge, including the chief administrative law judge, shall comply with Rule 10 of the Rules of the Supreme Court and, except as provided in (b) of this section, shall be and remain licensed to practice law in this state.

SECTION 10. An appeal under the jurisdiction of the office is initiated by filing with the office, and serving upon the commissioner of revenue, a notice of appeal from an assessment of the department of revenue under Tennessee Code Annotated, Section 67-1-1801. A notice of appeal may be filed or amended after the time for filing has expired only if good cause is shown.

SECTION 11. The administrative law judge shall hear all questions de novo under this part. The administrative law judge shall:

(1) resolve a question of fact by a preponderance of the evidence or, if a different standard of proof has been set by law for a particular question, by that standard of proof;

(2) resolve a question of law in the exercise of the independent judgment of the administrative law judge; and

(3) defer to the department of revenue as to a matter for which discretion is legally vested in the department of revenue, unless not supported by a reasonable basis.

SECTION 12. Service of documents required under this part may be accomplished in any manner authorized under the Tennessee Rules of Civil Procedure. If service is done only by mail, the date of service is determined by the date of mailing. If service is done by both mail and hand delivery, the date of service is determined by the earlier of the date of mailing or actual receipt of the documents.

SECTION 13. (a) In an appeal under Section 5, discovery may take place only under a plan for discovery approved by the administrative law judge. The administrative law judge shall approve a plan for discovery to the extent consistent with the efficient, just, and speedy conduct of the appeal. The plan may limit or set conditions on discovery and must include provisions for stipulations of fact by the department of revenue and the taxpayer. Discovery shall be limited to information that is relevant to the determination of the correct tax or penalty, unless the department of revenue or the taxpayer makes a showing that the discovery is reasonably calculated to lead to admissible information.

(b) Requests by the taxpayer for disclosure of public records relating to the appeal are governed by, and the records are disclosed only in accordance with, the plan approved under this section.

SECTION 14. An administrative law judge may issue a subpoena to compel attendance of a witness or the production of a document or thing. A subpoena may compel attendance of a witness or production of a document or thing, located either inside or outside the state, to the maximum extent permitted by law. A subpoena may be used for the purpose of discovery or for the purpose of presenting evidence at a formal hearing. A subpoena shall issue upon request of a party, subject to reasonable limitation or conditions set in the subpoena. A subpoena may

be enforced by petition to or other appropriate legal proceeding brought in a court of this state or another jurisdiction.

SECTION 15. (a) At or before the formal hearing, a party may present argument and evidence relevant to the amount of the tax or penalty. The administrative law judge shall administer oaths and permit inquiry necessary to determine the proper amount of the tax or penalty.

(b) Each party and witness shall be present during the formal hearing, except that:

(1) with the consent of the taxpayer, the administrative law judge may conduct all or part of the hearing by telephone, audio or video teleconference, or other electronic medium; and

(2) with the consent of the parties and the administrative law judge, all or part of the hearing may be conducted through correspondence.

(c) The taxpayer bears the burden of proof on questions of fact by a preponderance of the evidence unless a different standard of proof has been set by law for a particular question.

(d) The formal hearing before the administrative law judge is not required to be conducted with strict adherence to the Tennessee Rules of Evidence. Relevant evidence must be admitted if it is probative of a material fact in controversy. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is admissible if it is the kind of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Oral evidence may be taken only on oath or affirmation. The rules of privilege are effective to the same extent that they are recognized in a civil action in the courts of this state, except that relevant documents and other material items that are public records shall be admissible.

(e) The administrative law judge shall make a record of the proceedings by stenographic means.

(f) The administrative law judge may grant exceptions to the requirements of this section in the interest of justice.

SECTION 16. (a) The administrative law judge and each party is responsible for the efficient, just, and speedy conduct of the formal hearing. The administrative law judge may impose sanctions on the parties for failure to comply with a subpoena, an order respecting discovery, and any other matter regarding conduct of the appeal. In imposing sanctions, the administrative law judge shall be guided by the practices of the courts of this state in imposing sanctions for similar offenses in civil proceedings.

(b) The administrative law judge may:

(1) remand the matter for consideration of material new information or material information withheld by a party;

(2) prohibit a party from introducing information previously withheld without good cause, and any other evidence dependent upon the information;

(3) enter an order, upon a showing of good cause:

(A) barring a designated claim or defense;

(B) striking part or all of a pleading of a party; or

(C) dismissing part or all of the appeal; or

(4) grant any other relief that the administrative law judge considers appropriate.

(c) In addition to the remedies of (a) and (b) of this section, a party may seek enforcement of a subpoena or other order of an administrative law judge by the chancery or circuit court under Tennessee Code Annotated, Section 4-5-311.

SECTION 17. (a) Within one hundred eighty (180) days after the record on the appeal is closed, the administrative law judge shall issue a decision in writing. The decision must contain a concise statement of reasons for the decision, including findings of fact and conclusions of

law. In the decision, the administrative law judge may grant relief, provide remedies, and issue any order that is appropriate. The administrative law judge shall serve each party in the case with a copy of the decision. Unless reconsideration is ordered under (c) of this section, the decision under this subsection is the final administrative decision.

(b) A party may request reconsideration of a decision issued under (a) of this section within thirty (30) days after the date of service shown in the certificate of service of the decision. The request must state specific grounds for reconsideration. Reconsideration may be granted if, in reaching the decision, the administrative law judge has:

- (1) overlooked, misapplied, or failed to consider a statute, regulation, court or administrative decision, or legal principle directly controlling;
- (2) overlooked or misconceived some material fact or proposition of law;
- (3) misconceived a material question in the case; or
- (4) applied law in the ruling that has subsequently changed.

(c) The administrative law judge may issue an order for reconsideration of all or part of the decision upon request of a party. Reconsideration is based on the record, unless the administrative law judge allows additional evidence and argument. A hearing on reconsideration at which additional evidence or argument is offered or received is subject to the procedures applicable to a hearing under Section 15.

(d) The power to order reconsideration expires sixty (60) days after the date of service, as shown on the certificate of service, of a decision issued under (a) of this section. If the administrative law judge does not issue an order for reconsideration within the time allowed for ordering reconsideration, the motion for reconsideration is denied.

(e) Within sixty (60) days after the close of the record on reconsideration, the administrative law judge shall issue a written decision upon reconsideration. The administrative law judge shall serve each party in the case with a copy of the decision upon reconsideration. The decision upon reconsideration is the final administrative decision.

(f) A final administrative decision becomes final either on the date:

(1) Sixty (60) days after the date of service of a decision issued under (a) of this section if an order for reconsideration is not issued; or

(2) the decision upon reconsideration is served, as shown by the certificate of service executed by the administrative law judge under (e) of this section.

SECTION 18. (a) Records, proceedings, and decisions under this part are confidential, except that the records, proceedings, and decisions become public records and open to the public when the final administrative decision is issued and becomes final.

(b) Upon a showing of good cause, an administrative law judge shall issue a protective order requiring that specified parts of the records, proceeding, or decision shall be kept confidential in a particular appeal. If a protective order is issued, the final administrative decision shall be made public after redacting by deletion or substitution of information as required by the protective order.

(c) The department, in consultation with the chief administrative law judge, shall maintain, index, and make available for public inspection the final administrative decisions, proceedings, and records of the office made public under this section.

SECTION 19. (a) As to questions of law, a final administrative decision issued under this part, unless reversed or overruled, has the force of legal precedent.

(b) To promote consistency among legal determinations issued under this part, the chief administrative law judge may review and circulate among the other administrative law judges the drafts of formal decisions, decisions upon reconsideration, and other legal opinions of the other administrative law judges in the office. The drafts are confidential documents and are not subject to disclosure under Tennessee Code Annotated, Section 10-7-503 or this chapter.

SECTION 20. (a) Judicial review by the chancery court of a final administrative decision may be had by a party to the appeal under this part by filing a petition for review in accordance with the provisions of Tennessee Code Annotated, Section 4-5-322. The right to judicial review

under this subsection is not affected by the failure to seek reconsideration before the administrative law judge.

(b) The amount due must be paid or refunded within sixty (60) days after the date that the final administrative decision becomes final under Section 17. In place of payment of the amount due, a taxpayer who has appealed a final administrative decision may file a bond with the court or otherwise obtain relief from payment in accordance with the Tennessee Rules of Appellate Procedures.

(c) Appeals under this section are reviewed under Tennessee Code Annotated, Section 4-5-322.

(d) If, after the appeal is heard, it appears that the final administrative decision was correct, the court shall affirm the decision. If the final administrative decision is incorrect, the court shall determine the amount due. If the taxpayer is entitled to a refund, the court shall order the repayment and the department of revenue shall pay the amount due and attach a certified copy of the judgment to the payment. If the court determines that the taxpayer owes an additional amount, the court shall order the payment and the taxpayer shall pay the amount due and attach a certified copy of the judgment to the payment. Any payment required under this subsection shall be paid by the 30th day following the expiration of the time within which an appeal from the superior court decision may be filed, unless the party appealing files a bond or otherwise obtains relief from payment in accordance with the Tennessee Rules of Appellate Procedure.

SECTION 21. (a) At, or in connection with, any conference or hearing held pursuant to this part, taxpayers shall be entitled to the assistance of a qualified agent and of such other persons as they may wish.

(b) At any conference or hearing held pursuant to this part, taxpayers appear in person, by qualified agent, or, in the case of taxpayers, by a member of the taxpayer's immediate family.

An agent shall not have the power to appear for, or to act on behalf of, a taxpayer unless the agent presents a written authorization from the taxpayer at or prior to the conference or hearing.

(c) The following persons are permitted to act, appear and participate as an agent for the taxpayer:

(1) Attorneys;

(2) With respect to a corporation or other artificial entity, its regular officers, directors or employees; and

(3) Certified public accountants and other professionals as may be approved by the administrative law judge.

SECTION 22. (a) The remedies and procedures provided by this Act apply to all revenue tax appeals in which a request for formal hearing is filed with the department of revenue on or after the effective date of this act. The remedies and procedures existing before the effective date of this act apply to all revenue tax appeals in which a request for formal hearing was filed with the department of revenue before the effective date of this act, unless all of the parties to an appeal agree in writing to the remedies and procedures established by this Act.

SECTION 23. Tennessee Code Annotated, Section 67-1-1801(a)(1)(B), is amended by deleting the item and by substituting instead the following:

(B) The taxpayer may appeal to the office of tax appeals pursuant to the provisions of this act or file suit against the commissioner in chancery court in the appropriate county in this state, challenging all or any portion of the assessment of such tax (including any interest and penalty associated therewith). Until the earlier of the expiration of ninety (90) days following the mailing of notice of assessment to the taxpayer, the filing of an appeal to the office of tax appeals pursuant to this act or the filing of a suit by the taxpayer as provided in subsection (b), no levy as defined in § 67-1-1404 shall be made, begun or prosecuted by the commissioner. The commissioner may,

however, initiate and pursue any other action to collect an assessed deficiency under part 14 of this chapter or otherwise, including, but not limited to, the filing of a notice of lien as provided in § 67-1-1403 and the collection of a jeopardy assessment.

SECTION 23. Tennessee Code Annotated, Section 67-1-1801(c)(1), is amended by deleting the language “A suit” at the beginning of the first sentence of the subdivision and by substituting instead the following: “An appeal to the office of tax appeals or a suit”

SECTION 24. Tennessee Code Annotated, Section 67-1-1801(d), is amended by inserting the language “or appeal to the office of tax appeals” immediately after the word “suit” wherever it appears in the subsection.

SECTION 25. Tennessee Code Annotated, Section 67-1-1801(e), is amended in the first sentence of the subsection by inserting the language “or appealed to the office of tax appeals” immediately after the word “suit”.

SECTION 26. Tennessee Code Annotated, Section 67-1-1801(j), is amended in the first sentence of the subsection by deleting the language “file suit” and by substituting the language “file an appeal to the office of tax appeals or to file suit”.

SECTION 27. This act shall take effect July 1, 1997, the public welfare requiring it.